

## § 169a.10

## 32 CFR Ch. I (7–1–08 Edition)

not adequate reason for Government performance of that activity. Further, urgency alone is not an adequate reason to continue Government operation of a commercial activity. It must be shown that commercial sources are not able, and the Government is able, to provide the product or service when needed.

(D) Use of an exemption due to an unacceptable delay or disruption of an essential program shall be approved by the DoD Component's central point of contact office. This authority may be redelegated.

(3) *Patient Care.* Commercial activities at DoD hospitals may be performed by DoD personnel when it is determined by the head of the DoD Component or his designee, in consultation with the DoD Component's chief medical director, that performance by DoD personnel would be in the best interest of direct patient care.

[50 FR 40805, Oct. 7, 1985, as amended at 57 FR 29208, July 1, 1992]

### § 169a.10 Contracts.

When contract cost becomes unreasonable or performance becomes unsatisfactory, the requirement must be resolicited. If the DoD Component competes in the resolicitation, then a cost comparison of a contracted CA shall be performed in accordance with part III of the Supplement to OMB Circular A-76 (Office of Federal Procurement Policy pamphlet No. 4)<sup>6</sup>, part II of the Supplement to OMB Circular A-76 (Management Study Guide)<sup>7</sup>, part IV of the Supplement to OMB Circular A-76 (Cost Comparison Handbook)<sup>8</sup>, if in-house performance is feasible. When contracted CAs are justified for conversion to in-house performance, the contract will be allowed to expire (options will not be exercised) once in-house capability is established.

[57 FR 29208, July 1, 1992]

### § 169a.11 Expansions.

In cases where expansion of an in-house commercial activity is anticipated, a review of the entire commer-

cial activity, including the proposed expansion, shall be conducted to determine if performance by DoD personnel is authorized for national defense reasons, because no commercial source is available, or because it is in the best interest of direct patient care. If performance by DoD personnel is not justified under these criteria, a cost comparison of the entire activity shall be performed. Government facilities and equipment normally will not be expanded to accommodate expansions if adequate and cost effective contractor facilities and equipment are available.

[50 FR 40805, Oct. 7, 1985, as amended at 57 FR 29208, July 1, 1992]

### § 169a.12 New requirements.

(a) In cases where a new requirement for a commercial product or service is anticipated, a review shall be conducted to determine if performance by DoD personnel is authorized for national defense reasons, because no commercial source is available, or because it is in the best interest of direct patient care. If performance by DoD personnel is not justified under these criteria, then the new requirement normally shall be performed by contract.

(b) If there is reason to believe that commercial prices may be unreasonable, a preliminary cost analysis shall be conducted to determine whether it is likely that the work can be performed in-house at a cost that is less than anticipated for contract performance. If in-house performance appears to be more economical, a cost comparison shall be scheduled. The appropriate conversion differentials will be added to the preliminary in-house cost before it is determined that in-house performance is likely to be more economical.

(c) Government facilities and equipment normally will not be expanded to accommodate new requirements if adequate and cost-effective contractor facilities are available. The requirement for Government ownership of facilities does not obviate the possibility of contract operation. If justification for in-house operation is dependent on relative cost, the cost comparison may be delayed to accommodate the lead time necessary for acquiring the facilities.

<sup>6</sup> See footnote 3 to § 169a.1(a).

<sup>7</sup> See footnote 3 to § 169a.1(a).

<sup>8</sup> See footnote 3 to § 169a.1(a).

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(d) Approval or disapproval of in-house performance of new requirements involving a capital investment of \$500,000 or more will not be redelegated below the level of DAS or equivalent.

(e) Approval to budget for a major capital investment associated with a new requirement will not constitute OSD approval to perform the new requirement with DoD personnel. Government performance shall be determined in accordance with this part.

### **§ 169a.13 CAs involving forty-five or fewer DoD civilian employees.**

(a) When adequately justified under the criteria required in Appendix C to this part, CAs involving 11 to 45 DoD civilian employees may be competed based on simplified cost comparison procedures and 10 or fewer DoD civilian employees may be directly converted to contract without the use of a simplified cost comparison. Such conversion shall be approved by the DoD Component's central point of contact office having the responsibility for implementation of this part. Part IV of the Supplement to OMB Circular A-76 and Appendix C to this part shall be utilized to define the specific elements of costs to be estimated in the simplified cost comparison.

(b) In no case shall any CA involving more than forty-five employees be modified, reorganized, divided, or in any way changed for the purpose of circumventing the requirement to perform a full cost comparison.

(c) The decision to perform a simplified cost comparison on a CA involving military personnel and 11 to 45 DoD Civilian employees reflects a management decision that the work need not be performed in-house. Therefore, all direct military personnel costs will be estimated in the simplified cost comparison (see Appendix C to this part) on the basis of civilian performance.

(d) A most efficient and cost-effective organization analysis certification is required for studies involving 11 to 45 DoD civilian employees (see Appendix C to this part).

[57 FR 29208, July 1, 1992]

### **§ 169a.14 Military personnel commercial activity.**

Commercial activities performed exclusively by military personnel not subject to deployment in a combat, combat support, or combat service support role may be converted to contract without a cost comparison, when adequate competition is available and reasonable prices can be obtained from qualified commercial sources.

### **§ 169a.15 Special considerations.**

(a) Signals Intelligence, Telecommunications (SIGINT) and Automated Information System (AIS) security.

(1) Before making a determination that an activity involving SIGINT as prescribed in Executive Order 12333, and AIS, security should be subjected to a cost comparison, the DoD Component shall specifically identify the risk to national security and complete a risk assessment to determine if the use of commercial resources poses a potential threat to national security. Information copies of the risk assessment and a decision memorandum containing data on the acceptable and/or unacceptable risk will be maintained within the requesting DoD Component's contracting office.

(2) The National Security Agency (NSA) considers the polygraph program an effective means to enhance security protection for special access type information. The risk to national security is of an acceptable level if contractor personnel assigned to the maintenance and operation of SIGINT, Computer Security (COMPUSEC) and Communications Security (COMSEC) equipment agree to an aperiodic counter-intelligence scope polygraph examination. The following clause should be included in every potential contract involving SIGINT, Telecommunications, and AIS systems:

Contract personnel engaged in operation or maintaining SIGINT, COMSEC or COMPUSEC equipment or having access to classified documents or key material must consent to an aperiodic counter-intelligence scope polygraph examination administered by the Government. Contract personnel who